SUPREME COURT OF THE UNITED STATES.

No. 348.—October Term, 1925.

The United States of America, Plaintiff in Error, *vs.* The Minnesota Mutual Investment Company.	In Error to the District Court of the United States for the District of Colorado.

[May 24, 1926.]

Mr. Chief Justice Taft delivered the opinion of the Court.

The Minnesota Mutual Investment Company is a corporation of South Dakota, doing business in Colorado. It sued the United States for $571.26, under the Tucker Act, Judicial Code, § 24, par. 20. Its claim arises under the following circumstances. In a cause pending in the United States District Court for Colorado, the Investment Company was plaintiff, and McGirr and others were defendants. The plaintiff was required to place in the registry of the court $15,143.92, which the clerk of the court immediately deposited in the First National Bank of Denver, Colorado, designated by the court as one of its depositaries. The money remained in the bank to the credit of the court from June 7, 1918, until May 6, 1920, when it was returned to the Investment Company. During that period the bank paid interest on this deposit of 2 per cent. per annum, semi-annually into the United States Treasury for the use of the Government. The petition alleges that for a long series of years prior to this, interest paid by the bank on such court funds had been added to the deposit for the benefit of the party adjudged to own it, but that shortly before this deposit, the Secretary of the Treasury, by regulation, required all United States depositaries having court funds to pay interest at 2 per cent. to the Treasurer of the United States for its use.

The petition avers that the United States was not interested in the sum of money so deposited, had no right, title, or interest

therein directly or indirectly, and that the interest so paid was and is the property of the plaintiff and was received by the United States for the use and benefit of the plaintiff, and judgment was asked therefor.

The United States filed a demurrer to the complaint, which was overruled. It then answered alleging that the United States through its proper officers had entered into a contract concerning the payment of interest upon all government deposits, including the court funds, carried with the bank by virtue of its designation as a depositary of the United States, under the regulations promulgated by the Secretary of the Treasury under authority conferred upon him by the laws of the United States; that this contract consisted of an offer made on behalf of the United States and its acceptance by the First National Bank by its President; and that accordingly $571.26 was paid to the United States by the Bank; that in consideration of such payment, the United States allowed the bank the use of all government deposits held on deposit; allowed the bank the prestige and advertising connected with its handling of such government deposits; kept safe in its custody the collateral security pledged by the bank to secure the deposits; and supervised the depositary in all matters in connection with the deposit. Accompanying the answer was the correspondence claimed to embody the contract between the United States and the bank. A demurrer to the answer of the defendant was sustained, and the judgment for $571.26 followed. Direct appeal to this Court was allowed to the United States under the Tucker Act (Act of March 3, 1887, Secs. 4 and 9, c. 359, 24 Stat. 505), because taken before the taking effect of the Act of February 13, 1925. (43 Stat. 936, c. 229, Sec. 14.)

Section 995 of the Revised Statutes provides:

"All moneys paid into any court of the United States, or received by the officers thereof, in any cause pending or adjudicated in such court, shall be forthwith deposited with the Treasurer, an assistant treasurer, or a designated depositary of the United States, in the name and to the credit of such court: Provided, That nothing herein shall be construed to prevent the delivery of any such money upon security, according to agreement of parties, under the direction of the court."

Rule 20 of the rules of the District Court of Colorado contains the following:

"1. All moneys brought into court shall be paid to the clerk of the court, unless the court shall otherwise direct, and when not immediately paid to the party entitled, be deposited by said clerk, in his name of office, with such depositary as may be designated by law, or by the court, when no place is so designated. The amount so received, the purpose for which it was paid into court, together with the fact of the deposit, as herein provided, shall be noted by the clerk in the civil or criminal dockets of the court in the particular cause in which it is received. All interest paid on said deposits shall become a part thereof."

Section 251 of the Revised Statutes provides that the Secretary of the Treasury may make rules and regulations relative to public moneys and officers concerned therewith. Section 5153 of the Revised Statutes, as amended by later acts, provides in effect that all national bank associations designated for that purpose by the Secretary of the Treasury shall be depositaries of public money under such regulations as may be prescribed by the Secretary and they are to perform all such reasonable duties as depositaries of public money as may be required of them. The Secretary is to require them to give satisfactory security, by the deposit of United States bonds, for the safe keeping of the public money deposited with them.

The court below found that the Secretary of the Treasury had no power under these two sections to direct national banks to pay interest on deposits of court funds to the United States and that his authority to make such a regulation for interest extended only to public moneys, and not to court funds belonging to the parties to the litigation awaiting adjudication as to ownership or proper disposition. The conclusion of the court was that the United States had therefore received interest which should have been paid to the defendant in error, the Investment Company, and which it may recover from the United States.

But the Solicitor General argues that even if the United States had no right to collect the interest from the Bank, no cause of action was created in favor of the Investment Company against the United States for this illegal collection, that there was no contract of the Government, express or implied, by reason of that collection to pay it to the Investment Company, and that without this, no recovery can be had. This seems to us to be sound reasoning. An implied contract in order to give the Court of Claims

or a district court under the Tucker Act jurisdiction to give judgment against the Government must be one implied in fact and not one based merely on equitable considerations and implied in law. *Merritt* v. *United States*, 267 U. S. 338, 340, 341; *Tempel* v. *United States*, 248 U. S. 121; *Sutton* v. *United States*, 256 U. S. 575, 581. There is nothing in the averments in the pleadings in this case to show that the officers of the Government collected this interest or that it was received into the Treasury for the benefit of the Investment Company.

The judgment is

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.